Supreme Court, U.S.
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No. 94-161

In The

Supreme Court of the United States

October Term, 1994

WERNER T. HEUER,

Petitioner,

v.

UNITED STATES SECRETARY OF STATE,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITIONER'S REPLY TO BRIEF FOR THE RESPONDENT IN OPPOSITION

DOUGLAS H. STEIN*
DOUGLAS H. STEIN, P.A.
1001 So. Bayshore Dr.
Suite 2706
Miami, Florida 33131
(305) 358-2233

**Counsel of Record for Petitioner*

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OR CALL COLLECT (402) 342-2831

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REPLY ARGUMENT

The Secretary raises three arguments in his brief to support his suggestion that this Court deny Mr. Heuer's Petition for Writ of Certiorari.

First, the Secretary contends that the case of *Whitehead v. Haig*, 794 F.2d 115 (3d Cir. 1986), was incorrectly decided by the Third Circuit Court of Appeals. That contention, however, raises an irrelevant issue. In the instant case, the Eleventh Circuit specifically acknowledged that its decision conflicted with that of the Third Circuit in *Whitehead*. Even if this Court were ultimately to follow the Eleventh Circuit's line of reasoning rather than that of the Third Circuit, a conflict exists. That conflict requires resolution, and the present Petition offers this Court the opportunity to make uniform the law.

Moreover, as acknowledged by the Secretary, the recent enactment of §106 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, ___ Stat. ___ was a direct response to the Third Circuit's *Whitehead* decision. (Opposition at p. 7). This "response" contradicts the Secretary's contention that *Whitehead* was wrongly decided. The legislature's need to amend the statute in order to avoid *Whitehead* illustrates that even the legislature considered *Whitehead* to be a reasonable interpretation of the statute as it then existed.

Second, the Secretary argues that because of the enactment of the 1994 Act, the legal uncertainty faced by Mr. Heuer in the instant case will not be experienced by those who are issued Certificates of Loss of Nationality in the future. In addition, the Secretary contends that the issue raised herein will not "arise to any significant

extent with respect to CLNs issued in the past. . . . " (Opposition at p. 8). The Secretary bases this statement on his notation that during the past approximately nine years, 4,165 CLNs have been issued. Perhaps the Secretary feels that the potential thousands of persons who may be affected by the issue raised herein do not constitute a "significant" number. Mr. Heuer, however, thinks otherwise. In fact, Mr. Heuer agrees wholeheartedly with this Court's assessment that U.S. citizenship is regarded by many "as the highest hope of civilized man." *Schneiderman v. United States*, 320 U.S. 118, 122 (1976). As admitted by the Secretary, the number of potential persons affected by the issue presented herein is in the many of thousands. However, even if that number was a scant few, the rights affected by the issue raised are of such importance and human value, this Court should resolve the conflict.

Third, the Secretary contends that this Court should deny the Petition because Mr. Heuer, if given the opportunity, will not be able to prove his case in the District Court. It is hard to imagine how the Secretary can make this assessment since the dismissal of Mr. Heuer's case was done on the basis of subject matter jurisdiction. No evidence whatsoever has been presented in this case. Moreover, whether the familial pressure placed upon Mr. Heuer can render a renunciation of citizenship involuntary may only be determined upon the particular facts of each case. *See Maldonado-Sanchez v. Schultz*, 706 F. Supp. 54 (D.D.C. 1989).

In summary, a conflict exists between the circuits which raises an issue of invaluable importance to potentially thousands of persons. That conflict can only be

resolved by plenary consideration of the matter by this Court.

CONCLUSION

This Court should grant the petition for writ of certiorari.

Respectfully submitted,

DOUGLAS H. STEIN*
DOUGLAS H. STEIN, P.A.
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Suite 2706
Miami, Florida 33131
(305) 358-2233

Counsel of Record for Petitioner